

#### REMARKS

The Examiner has rejected claims 29-32 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows: "Claim 29 defines a record carrier having information signal recorded on it. The claimed invention would have been statutory had it been worded to include computer program embedded in a computer readable medium. Computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationship between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035."

Applicants submit that the Examiner is mistaken. In particular, as noted in MPEP §2106.01 - Computer-Related Nonstatutory Subject Matter, "In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data." Further, "When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in

most cases since use of technology permits the function of the descriptive material to be realized."

According to MPEP §2106.01, the leading case in this area is *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). In particular, at 1034, the CAFC states "The printed matter cases have no factual relevance where "the invention as defined by the claims requires that the information be processed not by the mind but by a machine, the computer"...Lowry's data structures, which according to Lowry greatly facilitate data management by data processing systems, are processed by a machine. Indeed, they are not accessible other than through sophisticated software systems." Further, "Contrary to the PTO's assertion, Lowry does not claim merely the information content of a memory. Lowry's data structures, while including data resident in a data base, depend only functionally on information content. While the information content affects the exact sequence of bits stored in accordance with Lowry's data structures, the claims require specific electronic structural elements which impart a physical organization on the information stored in memory."

Applicants submit that the claims of the subject invention are indeed analogous to those of Lowry, in that the claims do not claim merely the information content stored on the record carrier, but rather, how this information content is encoded enabling a processing machine to process the stored encoded information in order to supply the information content.

In view of the above, Applicants believe that the subject invention, as claimed in claims 29-32, is indeed statutory, and meets the requirements of 35 U.S.C. 101.

The Examiner has further rejected claims 22-38 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 5,579,183 in view of U.S. Patent Number 5,583,650 to Lane et al.

Enclosed herewith is a Terminal Disclaimer referencing U.S. Patent 5,579,181.

Applicants therefore believe that the Examiner's obviousness-type double patenting rejection has been overcome.

Applicants believe that this application, containing claims 22-38, is now in condition for allowance and such action is respectfully requested.

Respectfully submitted,

by           /Edward W. Goodman/            
Edward W. Goodman, Reg. 28,613  
Attorney  
Tel.: 914-333-9611